A.F.R.

HIGH COURT OF JUDICATURE CHHATTISGARH: BILASPUR

DIVISION BENCH

CORAM : HON'BLE SHRI S.R. NAYAK, CJ
& HON'BLE SHRI D.R. DESHMUKH, J.

WRIT PETITION NO.1538 of 2006

PETITIONER — Chhattisgarh Chemical Mazdoor Union Durg, through – Its President, Ram Singh, son of Late Jaijai Ram Singh, aged about 63 years, resident of 549/4, Street No. 4-B, Ashish Nagar (East) Risali, Bhilai, Distt. Durg (C.G.)

VERSUS

RESPONDENTS

1. State of Chhattisgarh, through – the Excise Commissioner, Dau Kalyan Singh Bhawan, Raipur (C.G.)
2. The Excise Commissioner, Shiv Bhawan, Bayron Bazar, Raipur (C.G.)

Present: Shri T.K. Tiwari, learned counsel for the petitioner.
Shri Utkarsh Verma, learned Dy. G.A. assisting Shri Prashant Mishra, learned Addl. A.G.. for the State.

ORAL ORDER
(Passed on 3rd April, 2006)

The following oral order of the Court was passed by

S.R. NAYAK, CJ .

In this writ petition preferred by Chhattisgarh Chemical Mazdoor Union, Durg, represented by its President, a writ of mandamus is sought directing the State of Chhattisgarh, the first respondent herein, to cancel the notification dated 20.01.2006, marked as Annexure-P/1 with regard to manufacturing, bottling of country liquor at distilleries. Although that is the prayer in para 7.1 of the writ petition, at the time of hearing, learned

counsel for the petitioner would tell us that by way of this writ petition, the petitioner wants to assail the constitutional validity of Clause (a) of Rule 2 of the Chhattisgarh Country Spirit Rules, 1995 (for short "the Rules") which defines "Manufacturing Warehouse" as substituted by the Notification dated 20.01.2006.

(2) The petitioner is a registered Trade Union consisting of about 1200 workmen as its members whose services have been engaged in bottling, packing and sealing of country liquor for the last 25 years and more at warehouse under the supervision of the District Excise Officer. The petitioner – Union was established in the year 1977 and since then the services of its members have been engaged in the aforementioned works. The Excise Commissioner, the 2nd respondent herein, issued Tender Notification in daily newspaper inviting tenders from the contractors and distilleries to award contract of bottling and packing of country liquor. The office bearers of the petitioner –Union met the Minister of Excise and brought to his notice that if the contract of bottling and packing of country liquor is awarded to the contractors and distilleries, in pursuance of the Tender Notification issued by the 2nd respondent, its members would be thrown out of the job and they would be deprived of source of their livelihood. They sought from the Minister of Excise a direction to the 2nd respondent to make amendment in Tender Notification so as to provide continued employment of its members. The petitioner – Union later came to know that clause (a) of Rule 2 of the Rules has been amended and a new definition of the term "Manufacturing Warehouse" is substituted in place of the earlier definition of that term and in view of the substitution of that term, the members of the petitioner – Union would be

thrown-out of the employment. In the circumstance, the petitioner – Union has filed this writ petition seeking intervention of the Court.

(3) The only contention advanced on behalf of the petitioner to assail constitutional validity of the impugned provision in the course of arguments is that if the substituted clause (a) of Rule 2 of the Rules is allowed to stand, the members of the petitioner-Union would be rendered jobless and, therefore, the impugned action is ' violative of principle of equality before the law and equal protection of the law ' guaranteed under Article 14 of the Constitution of India.

(4) The above ground stated by the learned counsel for the petitioner, even assuming to be correct, could not be a valid and substantive ground to annul the impugned delegated legislation. Clause (a) of Rule 2 of the Rules has been amended by the State Government in exercise of the rule-making power conferred on it by sub-Section (1) and clauses (d),(e),(f),(g) and (h) of sub-Section (2) read with the proviso to sub-Section (3) of Section 62 of the Chhattisgarh Excise Act 1915 (Act No.2 of 1915). Constitutional validity of a delegated legislation could be questioned successfully only on certain grounds, such as : (i) that the Parent Act is *ultra vires* the Constitution; (ii) that the delegated legislation is *ultra vires* the Constitution; (iii) that the delegated legislation is *ultra vires* Parent Act in the sense that it is in excess of the power conferred by the Parent Act or that it is in conflict with the Parent Act or that it is in conflict with the prescribed procedure of the Parent Act or that it is unreasonable, arbitrary and discriminatory or that it is *mala fide* or that it encroaches upon the rights of the applicant derived from the common law in the absence of an express authority in the Parent Act or that it conflicts

with the terms of some other statute. In this case, none of those grounds are urged to assail the constitutional validity of the impugned delegated legislation except vaguely stating that the impugned delegated legislation is violative of principles of equality before the law and equal protection of the law. The petitioner has not laid the necessary pleading before the Court to support the above ground taken in para 6.3 of the writ petition.

(5) It is true that Article 14 of the Constitution of India guarantees equality before the law or equal protection of the laws to every person, and, therefore, unreasonableness of administrative rule-making can also be challenged on the ground that it violates Article 14 of the Constitution of India, as held by the Supreme Court and High Courts. In **Air-India Vs. Nergesh Meerza** [1]; **State of Maharashtra Vs. Chanderbhan Tale** [2] **; West Bengal Electricity Board Vs. Desh Bandhu Gosh** [3] **; K.C. Arora Vs. State of Haryana** [4] **; J.S. Rukmani Vs. State of Tamil Nadu** [5] **; State of Maharashtra Vs. Raj Kumar** [6] **; Indravadan Vs. State of Gujarat** [7] **; Meenakshi Vs. University of Delhi** [8], the Supreme Court having pressed into service Article 14 postulates annulled the delegated legislations impugned before it. But, it needs to be noticed that the Court cannot strike down a delegated legislation on the ground of unreasonableness merely because, the Court thinks that it goes farther than is necessary or that it does not contain provisions which, in the opinion of the Court, would have been fair. The Courts cannot substitute

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1. AIR 1981 SC 1829 = (1981) 4 SCC 335 ; 2. AIR 1983 SC 803 = (1983) 3 SCC-387
3. AIR 1985 SC 722 = (1985)3 SCC 116; 4. (1984) 3 SCC -281;
5. AIR 1985 SC 785 = (1984) Supp. SCC 650; 6. AIR 1982 SC 1301 = (1982) 3 SCC-313;
7. 1986 Supp. SCC -254; 8. (1989) 3 SCC - 709

their wisdom with the wisdom of rule-making authorities. Unless, a rule is manifestly unjust, capricious, inequitable or partial in operation, it cannot be invalidated on the ground of unreasonableness or arbitrariness. A responsible administrative authority entrusted with the power of rule-making must ordinarily be presumed to know what is necessary, reasonable, just and fair. The validity of rules has to be judged by the generalities of the cases they cover and not by the stray instances of errors and irregularities discovered. In other words, the test of reasonableness should be applied in the context of realities of life, as observed by the Supreme Court in **Maharashtra State Board of Secondary and Higher Secondary Education Vs. Paritosh Bhupeshkumar Sheth** [9], where Rule 104 of the Board did not provide for inspection of the answer-books and revaluation thereof in the presence of the students had been challenged.

(6) In **G.B. Mahajan Vs. Jalgaon Municipal Corporation** [10], the Supreme Court held that the test of reasonableness as applied to administrative actions is different from the test as applied in the law of torts. In torts the test is that of a 'reasonable man' or as figuratively identified as the 'man on the Clapham Omnibus'. In administrative law this is not the test, because, then the Courts can substitute their own judgment with the judgment of the administrative authorities. In that view of the matter, in administrative law, 'reasonableness' is the standard indicated by the true construction of the Parent Act which distinguishes between what the delegate may or may not be authorised to do.

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9. AIR 1984 SC 1543 = (1984) 4 SCC -27

10. (1991) 3 SCC - 91

(7) In the premise of the above principles, if we review the impugned legislation in the premise of the allegation that when the impugned rule is implemented, the members of the petitioner – Union would loose job, even assuming that would be consequence, that circumstance could never be a valid and substantive ground to annul the impugned delegated legislation. Apprehended hardships that may be caused to all or some of the member- employees of the petitioner-Union as a consequence of the substituted definition of 'Manufacturing Warehouse', is not a ground to declare the impugned substituted rule as a nullity.

(8) Furthermore, it needs to be noticed that the constitutional validity of sub-Section (1) and clauses (d), (e), (f), (g) and (h) of sub-Section (2) and the proviso to sub-Section (3) of Section 62 of the Chhattisgarh Excise Act, 1915 under which the State Government, by way of amendment, has substituted the definition 'Manufacturing Warehouse' in place of the earlier definition of that term, is not challenged in this writ petition. The State Government being a delegate of the legislature under the above provisions, in exercise of its legitimate power has amended the rule. The impugned amended rule does not attract the wrath of any of the principles or limitations on the basis of which we could perhaps annul the impugned delegated legislation.

(9) In the result and for the foregoing reasons, we dismiss the writ petition, however, with no order as to costs.

Sd/-
Dilip Raosaheb Deshmukh
Judge

Sd/-
Chief Justice